

1 I, Dana E. Foster, hereby declare as follows:

2 1. I am an attorney with the law firm of White & Case LLP, attorneys for
3 Defendants Toshiba Corporation, Toshiba America, Inc., Toshiba America Information
4 Systems, Inc., Toshiba America Consumer Products, L.L.C., and Toshiba America Electronic
5 Components, Inc. (collectively, the "Toshiba Defendants"). I make this declaration in
6 support of Dell's Administrative Motion to File Documents Under Seal Pursuant to Civil
7 Local Rules 7-11 and 79-5(b) (Dkt. No. 2013) ("Motion to Seal").

8 2. Except for those matters stated on information and belief, which I believe to
9 be true, I have personal knowledge of the facts set forth herein and, if called upon, could and
10 would competently testify thereto under oath.

11 3. On June 18, 2008, the Court issued a Stipulated Protective Order (Dkt. No.
12 306) ("Stipulated Protective Order").

13 4. The Toshiba Defendants and co-defendants have produced certain documents
14 and information in this action designated as "Highly Confidential" pursuant to the Stipulated
15 Protective Order.

16 5. On October 15, 2013, Dell filed the Motion to Seal, in which it asks this Court
17 to seal portions of the following documents pursuant to Civil Local Rules 7-11 and 79-5(b):

- 18 a. Portions of the Motion for Discovery Order and to Strike Errata ("Dell's
19 Discovery Motion"); and
- 20 b. Exhibits A, B, C, D, E, F, G, and H to the Declaration of James M.
21 Wagstaffe in Support of Dell's Discovery Motion ("Wagstaffe
22 Declaration").

23 6. Pursuant to Civil Local Rules 7-11 and 79-5, and the Stipulated Protective
24 Order, the following documents or portions of documents should be maintained under seal
25 and redacted from Dell's Discovery Motion and the Wagstaffe Declaration:

- 26 a. The references on pages 3, 4, 6, 7, and 8 of Dell's Discovery Motion that
27 quote from, analyze, refer to, or take information directly from deposition

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DECLARATION OF DANA E. FOSTER IN SUPPORT OF DELL'S ADMINISTRATIVE MOTION
TO FILE DOCUMENTS UNDER SEAL PURSUANT TO CIVIL LOCAL RULES 7-11 AND 79-5(b)

Case No. 07-cv-5944
MDL No. 1917

testimony that the Toshiba Defendants have designated as "Highly Confidential";

- b. Exhibits A, B, and C to the Wagstaffe Declaration, which are excerpts of deposition transcripts that the parties have designated as “Highly Confidential”; and
- c. Exhibits D, E, F, G, and H to the Wagstaffe Declaration, which are documents that contain quotations or information from deposition transcripts that parties have designated as “Highly Confidential.”

9 7. Each of the documents listed above are excerpts of, quote from, or contain
10 information from deposition testimony designated by one of the Toshiba Defendants or co-
11 defendants as “Highly Confidential” pursuant to the Stipulated Protective Order. The parties
12 designated the deposition transcripts highly confidential because the testimony contained in
13 the document discusses confidential, non-public, and highly-sensitive business information.
14 Further, they discuss confidential, non-public information about the Toshiba Defendants’
15 sales practices, business and supply agreements, and competitive positions. The documents
16 describe relationships with companies — including customers and vendors — that remain
17 important to the Toshiba Defendants’ competitive positions. Upon information and belief,
18 publicly disclosing this sensitive information presents a risk of undermining the Toshiba
19 Defendants’ relationships, would cause harm with respect to the Toshiba Defendants’
20 customers, and would put the Toshiba Defendants at a competitive disadvantage.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 22nd day of October, 2013, in Washington, D.C.

Dana E. Foster

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CERTIFICATE OF SERVICE

On October 22, 2013, I caused a copy of the “DECLARATION OF DANA E. FOSTER IN SUPPORT OF DELL’S ADMINISTRATIVE MOTION TO FILE DOCUMENTS UNDER SEAL PURSUANT TO CIVIL LOCAL RULES 7-11 AND 79-5(b)” to be electronically filed via the Court’s Electronic Case Filing System, which constitutes service in this action pursuant to the Court’s order of September 29, 2008.

By: 

White & Case LLP
7701 Thirteenth Street, NW
Washington, DC 20005

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